IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

CRP.No. 1679 of 2003

CMA.4/1998 OF DISTRICT COURT, MANJERI
ORDER NO.A5-4282/96 DATED 22.12.1997 OF DFO, NILAMBUR SOUTH DIVISION

REVN. PETITIONER: RESPONDENT: APPELLANT:

THE CONSERVATOR OF FOREST, OLAVAKKOD,
REPRESENTING DFO., NILAMBUR SOUTH.

BY GOVERNMENT PLEADER(FORESTS) SRI.M.P.PRAKASH

RESPONDENT: APPELLANT: RESPONDENT:

M.A.ABU, S/O. ATHAN PILLAI,
MADAVANA HOUSE, SREEMOOLANAGARAM,
CHOWARA VILLAGE, ALUVA TALUK,
ERNAKULAM DISTRICT

BY ADV. SRI.M.M.SAIDU MUHAMMED
SRI.T.A.SHABEERALI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 1679 OF 2003

Dated this the 13th day of December, 2007

O R D E R

The Revision is filed by the Conservator of Forests challenging the judgment in C.M.A.No.4 of 1998, on the file of the Court of the District Judge, Manjeri, by which the learned District Judge set aside the order of confiscation dated 22.12.1997, passed by the Authorised Officer under Section 61A of the Kerala Forest Act (hereinafter referred to as `the Act').

2. The brief facts are as follows: On 29.3.1996 at about 3.30 a.m., information was passed by K.M.Mohanan, the temporary Watcher employed in the 1945 teak plantation to the Forest Officers of Karuvarakkundu Forest Station that teak trees were cut and removed in a vehicle. On getting the information, the Deputy Ranger and staff proceeded to the spot and inspected the stumps. A mahazar was prepared on 29.3.1996 in the presence of K.M.Mohanan, the temporary Watcher. O.R.No.2/96 was registered. From the tyre marks found at the place, the forest officers were satisfied that the timber was removed in a vehicle.

3. On further investigation, it was revealed that the timber was being stacked at a place called Nediyiruppu. Inspection was held and the

timber was seized and a mahazar dated 20.4.1996 was prepared. The timber was found in a coconut garden. The person who was found to be in possession of the timber was arrested. The officers were satisfied that the timber so seized were those cut and removed from the 1945 teak plantation. On further investigation, it was revealed that the timber was illegally transported in the vehicle KL-7G-4307 which was being plied at Mukkam. The vehicle was seized on 7.5.1996. The vehicle was being driven by Najimudeen, S/o.Imbichahammed. Statement of Najimudeen was recorded. He stated that during day time he used to drive the vehicle and that during night hours, his father used to take the vehicle. He also stated that the vehicle was being used by his father for illegal transportation of timber.

4. From the Joint Regional Transport Officer, information was collected about the ownership of the vehicle. It was reported that P.P.Ajithkumar was the owner of the vehicle. Notice was issued to him. P.P.Ajithkumar stated that he had sold the vehicle much before and that he did not know who was the owner of the vehicle at the relevant time. Notice issued to Imbichahammed was returned on the ground that he had left India.

5. On 10.6.1996, Imbichahammed filed an application for release

of the vehicle. Claiming to be the owner of the vehicle, M.A.Abu, the respondent herein, also filed an application for release of the vehicle. M.A.Abu filed O.P.No.15954 of 1996 before the High Court. As per the judgment delivered by the High Court, the vehicle was released to M.A.Abu on certain conditions.

6. On taking a decision to initiate proceedings for confiscation of the vehicle, notices were issued to the persons concerned. The case was posted before the Authorised Officer on several dates for taking evidence. The evidence of the Range Officer was recorded. The statements of M.A.Abu and the person from whom the timber was seized, were also recorded.

7. The Authorised Officer passed an order dated 22.12.1997 confiscating the vehicle under Section 61A of the Act. It is noticed in the order that though Imbichahammed initially claimed release of the vehicle to him, later his attempt was to help M.A.Abu to get possession of the vehicle. The Authorised Officer held that at the relevant time the vehicle was being possessed by Imbichahammed and it was under his control. There is no evidence to indicate that M.A.Abu was in management of the vehicle at the relevant time.

8. M.A.Abu filed appeal before the District Court challenging the order of confiscation. Learned District Judge held that under Section 61B of the Act, the Authorised Officer need only to serve notice on the person from whom the vehicle was seized and that it was not necessary to conduct an enquiry regarding the ownership of the vehicle. The Authorised Officer was not expected to decide complicated questions regarding ownership of the vehicle. Learned District Judge also held that in the absence of strong materials to the contrary, the registered owner must be presumed to be the person in possession of the vehicle at the relevant time. The learned District Judge held that materials on record indicated that M.A.Abu was in possession of the vehicle at the relevant time. The finding of the Authorised Officer that the vehicle was in the possession of Imbichahammed at the relevant time was held to be unsustainable.

9. Learned District Judge considered the question whether the vehicle was liable to be confiscated. It was held that there is no reason to interfere with the finding of the Authorised Officer that what was seized on 20.4.1996 was the timber collected from reserve forest. After holding thus, only on the ground that the statement of Mohanan, the temporary Watcher, was not recorded by the Forest Officials, the learned District Judge came to the conclusion that there are no materials to arrive at a

conclusion that the vehicle in question was used for the prejudicial activity complained of. On further holding that the father of the driver of the vehicle was not questioned, the learned District Judge held that there is no reliable evidence to show that the vehicle in question was used for the transportation of the timber in question.

10. I have gone through the records of the case which were made available before me. From the records it is seen that Mohanan, the temporary Watcher, accompanied the Forest Officials and he was present at the time of preparing the mahazar. He is a signatory to the mahazar. In the mahazar, mention is made about the statement made by Mohanan that timber was removed from the 1945 teak plantation in a vehicle. On the basis of further enquiry the timber was found out from the coconut garden of Saidalavi. At the time when the vehicle was traced, Najimudeen was the driver of the vehicle. Najimudeen stated that his father Imbichahammed is the owner. Imbichahammed could not be traced out as he was out of India. His statement could not be recorded. Statement of Najimudeen indicates that the vehicle was regularly being used for illegal transportation of timber by his father, namely, Imbichahammad. The Forest Officers were also examined before the Authorised Officer and they were cross examined on behalf of M.A.Abu, the respondent herein.

11. It is to be noted that M.A.Abu belongs to Sreemoolanagaram in Ernakulam District. He has no case that his vehicle was being regularly plied at Mukkam in Malappuram District. He stated that the driver of the vehicle was Abdul Kareem, his brother-in-law. M.A.Abu, who claims ownership of the vehicle has not produced any document to show that the vehicle was being plied at Mukkam. On the other hand, at the time when the vehicle was seized, Najimudeen was the driver and not Abdul Kareem. Najimudeen stated that his father Imbichahammed was the owner. There was dispute regarding ownership. For the purpose of disposal of the confiscation proceedings, it is not necessary to decide the disputed question of ownership. The relevant question was whether the vehicle was being used for illegal transportation of forest produce and whether on that account the vehicle was liable to be confiscated.

12. Learned District Judge reversed the decision of the Authorised Officer only on the ground that the statement of Mohanan was not recorded and that Imbichahammed, who was not available in India at the relevant time, was not examined and his statement was not recorded. The reasons stated by the learned District Judge for reversing the order passed by the Authorised Officer are unsustainable.

13. At the same time, I am of the view that the order of confiscation does not refer to the contentions put forward by the respondent herein and the documents produced by him. The order of confiscation would indicate that Mohanan, the temporary Watcher, had stated the number of the vehicle in which the timber was removed, as KL7 G-4307. The order also states that an attempt was made to prevent the vehicle being moved with the help of local people. But the mahazar dated 29.3.1996, the first document which came into existence, does not state the number of the vehicle. There is no case for the revision petitioner that the statement of Mohanan was recorded. Mohanan has not adduced any evidence. Why a Forest Watcher could not be made available to adduce evidence and to make himself available for cross examination, is not stated by the Authorised Officer. Though the number of the vehicle is not stated in the mahazar dated 29.3.1996, on 7.5.1996, the vehicle bearing No.KL7 G-4307 was seized. How the Officials came to know that this particular vehicle was involved, is not seen discussed in the order of confiscation. Probably during the enquiry they came to know that the vehicle in question was used for transportation of timber. But, on what materials they came to know and whether those materials are reliable are also relevant matters for the decision of the Authorised Officer. In the order of confiscation, the Authorised Officer has stated that Mohanan, the temporary Watcher, has stated the number of the vehicle. But, on

perusal of the records, no such statement is seen in the mahazar dated 29.3.1996. Since the order of confiscation does not contain the necessary particulars indicating the subjective satisfaction of the Authorised Officer to confiscate the vehicle, I am inclined to set aside the order of confiscation as well.

14. Learned Special Government Pleader for Forests submitted that inorder to prove the user of the vehicle for committing the offence under the Forest Act, it is not necessary to prove the user of the said vehicle beyond all reasonable doubts. He refers to the decision in **State of Kerala** v. **Margrate Joshy** (1999 (3) KLT 359). The Special Government Pleader for Forests also brought to my notice the decision in **State of Kerala** v. **Mathew** (1995 (2) KLT 772), wherein the Division Bench held thus:

> "4. Sec.61-B contains two sub-sections. The first sub-section says that no order of confiscation shall be made without giving notice to the person from whom it was seized informing him of the grounds for confiscation and affording him an opportunity of making representation. Sub-section (2) contains a further restriction against confiscation. It says that no order of confiscation shall be made if the owner of the vehicle proves that it was used in carrying the timber "without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the vehicle and that each of them had taken all reasonable and necessary precautions against such use".
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> 5. The restriction against confiscation contained in sub-section (2) can operate only on the combination of three

> postulates. First is that the owner or his agent was totally unaware of the illicit use. Second is that he had taken all reasonable and necessary precautions against such use. Third is, the person in charge of the vehicle had also taken reasonable and necessary precaution against such use. If the owner succeeds in satisfying only the first two postulates, he would not get the benefit of the restriction against confiscation. The third condition is as important as the other two and unless that also is established no advantage would practically enure to the owner of the vehicle. Sub-section (2) would remain at bay if the third condition remains unsatisfied."

It is submitted by the learned Special Government Pleader that whoever is the owner, he has not proved the necessary ingredients under Section 61B in order to claim immunity from confiscation.

15. Learned counsel for the respondent submitted that when two views are possible, the revisional court shall not interfere with the order passed by the subordinate court. He refers to the decision in **Lekshmikutty Panickathi** v. **Bhargavi Panickathi** (1987 (2) KLT 562) in support of that contention.

16. For the aforesaid reasons, the judgment of the learned District Judge is liable to be interfered with. Accordingly, the judgment in C.M.A. No. 4 of 1998 is set aside. But that does not mean that the order of confiscation passed by the authorised officer is to be confirmed. For the reasons stated above, I am inclined to set aside the order of confiscation

as well and to direct the Authorised Officer to consider the matter afresh and pass orders in accordance with law, after affording an opportunity to the parties concerned to produce documents and to adduce evidence. The evidence already on record and the documents produced before him shall be considered and discussed by the Authorised Officer. Learned counsel appearing for M.A.Abu submitted that copies of relevant documents may be directed to be supplied to him. If an application is filed in that behalf by him indicating the copy of the document which is required, the Authorised Officer shall issue copy of the same on payment of necessary charges.

17. The vehicle is now in the possession of M.A.Abu. He shall continue to possess the vehicle on the same conditions on which it was released to him until orders are passed by the Authorised Officer.

The Civil Revision Petition is allowed as above. No order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 1679 OF 2003

O R D E R

13th December, 2007